

(1909) 03 CAL CK 0055
In the Calcutta High Court

Bhola Ram Chowdhry

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 22-03-1909

Acts Referred:

Calcutta Municipal Act, 1923 — Section 371, 5, 9
Specific Relief Act, 1877 — Section 45

Citation : 3 Ind. Cas. 341

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

1. This is a suit brought against the Corporation of Calcutta in substance for a declaration that the refusal to give sanction to make certain additions and alterations to the plaintiff's building has been irregular, illegal and wrongful, and that he is entitled to have such sanction, and for an injunction restraining the Corporation from causing portions of the plaintiff's building to be demolished and from further harassing the plaintiff with prosecutions for the : alleged breach of the Building Regulations as has been done.

2. This suit is really an action for a mandamus to force the Corporation to sanction certain plans rejected under the provisions of the Calcutta Municipal Act. The Municipal Act of 1899 is not an easy Act to construe in all respects. Section 5 constitutes three Municipal authorities carrying out the provisions of the Act (i) a Corporation, (ii) a General Committee of the Corporation, and (iii) a Chairman of the Corporation.

3. The Corporation, which is the largest Municipal authority, has certain specific duties allotted to it under the Act. They depend on Section 14 chiefly. The general administration of the Act is vested in the Chairman appointed by the Local Government. Certain duties are cast on the General Committee. That body is constituted u/s 9. Each of the three authorities is independent of the other. In certain respects one requires the sanction of the other to do the acts authorised. It is true that the only body constituted a body corporate is the Corporation. That

is a body consisting of the Chairman and 50 Commissioners elected and appointed. The Chairman and the General Committee have control with regard to the approval or refusal of plans under the Building Regulation set out in schedule 17. Section 371 provides:

Permission to erect or re-erect a masonry building shall not be given unless and until the Chairman has approved the site on an application sent to him u/s 370." The Section 375 provides:- "Whenever the Chairman refuses to approve a building site for a masonry building, or to grant permission to erect or re-erect a masonry building, he shall state specifically the grounds for such refusal, and the applicant may appeal to the General Committee against such refusal." Sub-section (2) provides: "The decision of the General Committee shall be final." (3) " If the General Committee reject any such appeal, they shall, by written order, specifically state the grounds for such rejection.

4. Section 377 gives the grounds on which approval of a site for the erection or re-erection of a masonry building, or permission to erect or re-erect a masonry building, may be refused. It is important to call attention to Section 95 which provides for a hearing by the Sub-Committee of an appeal from the Chairman for approval of the building: plans subject to confirmation by the General Committee.

5. In this Act I have been unable to find any provision, either express or implied, which gives the Corporation of Calcutta any control over the General Committee in matters specifically delegated by the Act to the General Committee. This Act confers the right to approve or reject plans on the Chairman. Appeal is to the General Committee and that body's decision is final. No appeal lies to the Corporation. The Corporation, so far as the approval or rejection of a plan is concerned, has no jurisdiction in the matter, and it is impossible to say that an action in the nature of a mandamus lies against the Corporation to compel them to approve the plans. The plaintiff has mistaken his remedy. I think the plaintiff's remedy is against the General Committee or Chairman u/s 45 of the Specific Relief Act to determine matters referred to them under the Calcutta Municipal Act. It seems to me it would be an anomaly to order the Corporation to do an act which is expressly reserved to the two other Municipal authorities under the terms of the Act.

6. The suit, therefore, fails and must be dismissed with costs on scale No. 2.